IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3340 & 3350 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURSANGJI AMBARAM

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3340 of 2002

MR AJ PATEL for Petitioners in S.C.A. No.3340/2002

MR JM PATEL for Petitioners in S.C.A. No.3350/2002

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/03/2002

COMMON ORAL JUDGEMENT

Both these petitions are directed against the judgment and order dated 7.8.2001 passed by a Division bench of the Gujarat Revenue Tribunal ("the Tribunal" for brevity) in Revision Application No.TEN.B.A.27/2001 under the provisions of Section 76 of the Bombay Tenancy and Agricultural Land Act, 1948 ("the Act" for brevity).

2. By the impugned judgment the Tribunal has set aside the judgment and order dated 25/10/2000 passed by Mr.S.G. Bharwad Deputy Collector (Land Reforms & Appeals), Ahmedabad in an appeal which was preferred after delay of 40 years against the order of the Mamlatdar passed in the year 1960.

Earlier, against the same order, occupants of the land (petitioners in Special Civil Application. No.3340/2002) had filed revision application after 34 years under Section 76 A of the Act. That revision application was allowed by the Deputy Collector on 4/4/95. When a revision application was filed by the State Government against the said order dated 4/4/95 before the Tribunal, the occupants filed a note for taking up the matter for immediate hearing and at the hearing of the revision application submitted a purshis (a note in writing), giving consent for setting aside the said order dated 4/4/95 of the Deputy Collector. The Tribunal by its order dated 28/2/2000 allowed the said revision application and set aside the order dated 4/4/95 passed by Deputy Collector (Land Reforms) Ahmedabad.

Thereafter the occupants preferred an appeal under Section 74 of the Act before Mr.S.G.Bharwad who was at the relevant time Deputy Collector (Land Reforms & Appeals) at Ahmedabad. By an order dated 25/10/2000, Mr.S.G. Bharwad, Deputy Collector allowed the appeal in favour of the occupants and modified the order of the Mamlatdar and Agricultural Land Tribunal passed as far back as in 1960, after observing that the conditions imposed by the said order were a nullity; therefore, the same could be interfered with even after 40 years.

The occupants have filed Special Civil Application No.3340/2002 whereas Mr.S.G. Bharwad Deputy Collector has filed Special Civil Application No.3350/2002 challenging the same judgment on the ground that disciplinary proceedings have been initiated against him on account of his judgment dated 25/10/2000, which has been set aside by the Tribunal.

3. Before setting out the facts leading to filing of the present petition and also the contentions raised, it is necessary to make a brief reference to the scheme of Section 43 of the Tenancy Act. The Tenancy Act is an Act to amend the law relating to the tenancy of Agricultural Lands and is basically a law for agrarian reforms. But for this Act, the tenants who were cultivating land for a number of years, would have continued to remain tenants

and would never have become owners of the lands which they were cultivating for a number of years. Chapter III of the Act confers special rights and privileges on tenants and provisions for distribution of lands for personal cultivation. Para-II of the said chapter opens with Section 32 of the Act which states that on the first day of April, 1957 (tillers' day) every tenant shall be deemed to have purchased from his landlord, free of all encumbrances, the land held by him as tenant, if, such tenant is a permanent tenant thereof and cultivates land personally or even if such tenant is not a permanent tenant but cultivates the land leased personally and the landlord had not given notice of termination of tenancy under Section 31 or the landlord had not applied to the Mamlatdar before 31st March, 1957 for obtaining possession of the land on the ground of termination of tenancy or otherwise. There are various other provisions in Section 32 which are not relevant for the purposes of the present controversy. Section 32-G provides that as soon as may be after the tillers' day the Agricultural Land Tribunal shall publish a public notice in each village calling upon all tenants who under Section 32 are deemed to have purchased the lands, all landlords of such lands and all other persons interested therein to appear before the A.L.T. on the specified date. The Tribunal shall also issue a notice individually to each such tenant, landlord and other interested persons and the A.L.T. shall record the statement of the tenant whether he is or he is not willing to purchase the land held by him as a tenant. If the tenant is willing to purchase, the A.L.T. shall, after giving an opportunity to the tenant, the landlord and other interested persons and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of Section 32-H and Section 63-A(3) of the Act.

The purchase price to be paid by the tenants is much less than the market price - being only 20 times the land revenue assessment or 6 times rent of the land. This is obviously so because the Tenancy Act is a law for agragian reforms under which the tenants are given ownership in the lands; but this ownership is not absolute unrestricted ownership because the agricultural land is to be given to the tenant for personal cultivation. Hence Section 43 provides that the land purchased by a tenant under the aforesaid provisions shall not be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine. Sub-section (1A) of

Section 43 further provides that such sanction shall be given by the Collector in such circumstances and subject to such conditions as may be prescribed by the State Government. By subsequent amendment made it was provided through Sub-section (1B) that these restrictions are not to be applied to a permanent tenant, if, prior to purchase, the permanent tenant held a transferable right in the tenancy of the land. Sub-section (2) provides that any transfer or partition in contravention of subsection (1) shall be invalid.

Under the aforesaid provisions of Section 43, the State Government issued instructions from time to time lying down the conditions for granting permission under subsection (1) of Section 43. In cases where the restrictions under subsection (1) of Section 43 are applied, the land is known as new tenure land. In cases where such restrictions are not applied the land is known as old tenure land. Hence, if any land is purchased by tenant under the aforesaid provisions of the Tenancy Act, he can not sell the land without prior permission of the Collector, but he would have to apply to the Collector for such permission. He would have to specify the purpose for sale and the purpose for which purchaser would utilise the land. Since the tenant was given the advantage of purchasing the land at a very low cost, whatever profits he would derive on selling the land, he would be required to share the same with the society because he was granted the land at a throw away price for his personal cultivation. The State Government accordingly issued instructions laying down how to determine the profit being made by the tenant turned purchaser. The part of the price to be paid by the seller to the State Government is known as premium. Therefore the premium would have to be paid for selling a new tenure land to another person even as a new tenure land. While applying for the permission, the permission could also be sought for converting the new tenure land into old tenure land, which would free the land from all restrictions under Section 43 of the Act. For converting the new tenure land into old tenure land, the premium would be much higher. Keeping this scheme of Section 43 of the Tenancy Act in the mind, the Court proceeds to set out the facts.

4. The facts leading to the present controversy briefly stated are as under :-

4.1. The land in question, admeasuring 4 acres, 5 gunthas is in survey No.18 of village Makarba, Taluka Dascroi, District Ahmedabad and is now in the outskirts of Ahmedabad city. There were proceedings under Section

32G of the Act, Tenancy case No.23/Makarba wherein by his order dated 18/2/1960 the Agricultural Land Tribunal (A.L.T.) and the Additional Mamlatdar gave a finding that Ambaram Bhuptaji was a tenant of the land in question on 1/4/57, he was willing to purchase the land and the land did not fall in any exempted category, nor had the landlord or the tenant claimed any exemption under the Act. So the tenant was entitled to purchase the land under Section 32 of the Act on the Tillers' day. Accordingly tenant Ambaram Bhuptaji was deemed to have purchased the land on 1/4/1957. The purchase price was fixed at Rs.1700/- and he was required to pay the landlord the said amount with interest at the rate of 4.5.% and also the rent in arrears.

4.2. In the year 1995, the heirs of Ambaram Bhuptaji through their power of attorney filed tenancy revision application No.34/95 before the Deputy Collector (Land Reforms & Appeals) Ahmedabad under Section 76A of the Act challenging the aforesaid order dated 18/2/1960 contending that their forefathers were tenants of the land in question since 1949-50. But they were not held to be permanent tenants which was contrary to law. Moreover, the land in question was treated as a new tenure land (that is the land in respect of which there was restriction regarding the sale) which was also contrary to the law because the Mamlatdar's order under appeal did not incorporate any such condition that the land will be treated as a new tenure land. Hence, the Mamlatdar's order dated 18/2/1960 be set aside and the appellants be treated as permanent tenants of the land and the entry regarding new tenure condition also be deleted.

4.3. By his order dated 4/4/95, Mr.J.C. Patel, Deputy Collector (Land Reforms & Appeals) Ahmedabad allowed the revision application and modified the Mamlatdar's order dated Nil/1960 in Tenancy case No.23/Makarba. In the said order the Deputy Collector mentioned that in the revenue record Ambaram Bhuptaji's name was entered as a tenant on 27/2/1949. Ambaram Bhuptaji was entitled to purchase the land as a permanent tenant and he was not subject to the restrictions under the Tenancy Act. The Deputy Collector also modified the order of the Mamlatdar on the ground that the said order did not clarify whether Ambaram Bhuptaji was a permanent tenant or an ordinary tenant, and held that Ambaram Bhuptaji was entitled to be treated as a permanent tenant. Hence the order of the Mamlatdar was null and void ab initio and since it was contrary to the law it was required to be modified. The Deputy Collector further held that as per the decisions

of the various Courts if an order is null and void, the period of limitation does not apply to the appeal or revision against such order. Hence, even though the revision application was prima facie time barred, it was treated as within the period of limitation.

4.4. The State Government challenged the aforesaid order of the Deputy Collector before the Gujarat Revenue Tribunal through revision application No.B.A.429/96. On 14/2/2000 the occupants, that is the heirs of Ambaram Bhuptaji filed a note before the Tribunal for taking up the matter as the occupants were desirous of presenting a purshis (page 36 and page 37 of the paper-book). The purshis read as under :- (translated)

The Gujarat State Revenue Tribunal, at Ahmedabad

B.A. No.429/96

Petitioner : The State of Gujarat

Vs.

Respondents : Sursangji Ambaram etc. through power of attorney holder Sureshbhai.

The applicants respectfully submit as under :-

The above numbered revision application has been filed by the State Government against the order dated 4/4/95 of the Deputy Collector, Ahmedabad in revision case No.34/95. We the respondents in the above revision application, state that if the revision application of the State Government is allowed, we have no objection. Hence, the Hon'ble Tribunal may be pleased to allow the above numbered revision application and pass such orders as may be deemed fit.

Signature
(Sursingh Ambaram Mahutaji)

On the basis of the aforesaid consent purshis, the Tribunal noted that there could be no objection to setting aside the order of the Deputy Collector under challenge in the revision application. The Tribunal accordingly set aside the aforesaid order dated 4/4/95 of the Deputy Collector (Lands Reforms & Appeals). This order dated 28/2/2000 was passed by the Division Bench of the Tribunal consisting of Mr.A.K. Chakravarty President

and Mr.B.K. Shah, Member.

4.5. Thereafter the occupants through their same power of attorney Sureshbhai Shah filed tenancy appeal No.126/2000 under Section 74 of the Act on 15/9/2000, against the same order dated Nil/1960 in tenancy case no.23/Makarba. In the said appeal also the order was challenged on the ground that the restrictions of the new tenure under Section 43 of the Act were erroneously imposed respect of the land in question. In the said appeal also it was contended that the appellants were entitled to be treated as a permanent tenant under the provisions of Section 2 (10) (A) (B) in the Act, and therefore, the restricted tenure conditions under Section 43 of the Act were not applicable.

4.6. The State Government raised two preliminary contentions limitation and res judicata. It was contended on behalf of the State Government that the order under challenge was passed in the year 1960 and the period of limitation for challenging such order under Section 74 of the Act was 60 days. The application dated 15/8/2000 for condonation of delay (annexure-J page 41) with affidavit (annexure-K page 42) merely stated as under :-

> "The A.L.T. had passed the order which is correct, but on the basis of that order restrictions under Section 43 of the Act were applied. That part of the order was invalid and nullity and, therefore, there was no bar of limitation.
>
> There are several judgments of our High Court. Hence, there was no need for filing an application for condonation of this delay. If there is any delay in filing appeal the appeal may be condoned for the aforesaid reasons."

The Deputy Collector Mr.S.G. Bharwad overruled preliminary objection of delay and bar of limitation on the ground that, that part of the order imposing conditions under Section 43 of the Act not treating the tenant as a permanent tenant was null and void ab-initio. Reference was made to the decisions of the High Court and of the Tribunal to the effect that the Courts should not dismiss the meritorious matters on the technical consideration of limitation and that substantial justice should be preferred.

4.7. As regards, the second contention on the point of

res-judicata, it was contended on behalf of the State Government that order of the Mamlatdar and A.L.T. passed in 1960 was earlier taken in revision by the Deputy Collector in the year 1995 and by order dated 4/4/95 the revision application was allowed and the order of the Mamlatdar was modified. When the State Government challenged that order in revision application No.429/96, the occupants had given consent for setting aside that order dated 4/4/95. The Tribunal had by its order dated 28/2/2000 set aside the order dated 4/4/95 of the Deputy Collector. Hence this appeal preferred by the same petitioners/appellants for the same relief was not maintainable.

The reply of occupants to the aforesaid preliminary contention was that the order dated 4/4/95 passed by the Deputy Collector in revision under Section 76-A of the Act was without jurisdiction, illegal and void ab-initio and such order was not likely to be sustained in revision before the Gujarat Revenue Tribunal and that upon being convinced of the same, the occupants had requested the Tribunal to take up the revision application immediately before the Tribunal could give any finding or make any observation adverse to the occupants. It was, therefore, the argument of the occupants that since the Tribunal had allowed the Revision Application by setting aside the order dated 4/4/95 of the Deputy Collector without making any observation damaging the occupants, the bar of res-judicata would not apply and, therefore, the tenants were entitled to prefer the appeal under Section 74 of the Act.

Deputy Collector Mr.S.G. Bharwad accepted the above submission of the occupants and held that since the Tribunal had in its judgment dated 28/2/2000 set aside the previous order dated 4/4/95 of the Deputy Collector without making any observation or without giving any finding adverse to the occupants and since the said order of the Deputy Collector was a nullity and non-existent under Section 76A of the Act, the bar of res-judicata would not apply and the appeal under Section 74 of the Act was required to be decided by Deputy Collector independently without being influenced by the previous order of the Tribunal.

4.8. By the judgment and order dated 25/10/2000, Mr.S.G. Bharwad Deputy Collector (Lands Reforms & Appeals) Ahmedabad allowed the appeal and modified the order dated 18/2/1960 of the Mamlatdar. He held that the appellants' father Ambaram Bhuptaji was a permanent

tenant of the land in question and that the land be treated as having been sold as an old tenure land without any restrictions whatsoever and that the Mamlatdar and A.L.T. shall issue a notice for furnishing a fresh certificate under Section 32M of the Act and that necessary entries be made in the revenue record. The Deputy Collector further held that reference to the restriction under Section 43 of the Act as restricted tenure land was also required to be deleted in the certificate of purchase under Section 32 M of the Act and in the revenue record also.

4.9. The aforesaid judgment and order dated 25/10/2000 of Mr.S.G. Bharwad Deputy Collector (Land Reforms) was carried by State Government in revision before the Tribunal being revision application No.27/2001.

After filing of the revision application by the State Government, Mr.S.G. Bharwad, Deputy Collector (Land Reforms & Appeals) who had passed the order dated 25/10/2000 was suspended by the State Government on 9/1/2001. He filed Special Civil Application No.274/2001 challenging the order of suspension. This Court (Coram: Mr. Justice D.C. Srivastava) admitted the petition and granted interim relief in favour of Mr.S.G. Bharwad. In the present proceedings we are not concerned with that service matter. However, after the arguments of the learned advocate for the occupants and the learned Government Pleader were concluded before the Tribunal, Mr.S.G. Bharwad sent his written submissions dated 18/7/2001 to the Tribunal seeking to explain his order dated 25/10/2000. The Tribunal observed that Mr.Bharwad was not a party to the revision application, obviously because when the revision application was heard in July, 2001 and decided in August, 2001 Mr.S.G. Bharwad was not holding the post of Deputy collector (Land Reforms), Ahmedabad.

4.10. By the impugned judgment and order dated 7/8/2001 the Tribunal allowed the revision application and set aside the order dated 25/10/2000 of Mr.S.G. Bharwad, Deputy Collector. The Tribunal considered the arguments of both the parties that is of State Government and also of the occupants. The Tribunal also referred to certain irregularities pointed out by the learned Government Pleader, in the order of Deputy Collector and found that there was substance in that grievance. However, it is not necessary to refer to the said irregularities as the Tribunal has considered the matter on merits and found that the order of the Deputy Collector was not sustainable. The findings given by the Tribunal on

merits will be considered while dealing with the arguments of the learned counsel for the petitioners in this petition.

5. Mr.A.J. Patel learned counsel for the occupants petitioners in Special Civil Application No.3340/2002 has raised the following contentions :-

5.1. The judgment under challenge was vitiated by bias of the President of the Tribunal.

5.2. The order passed by the Deputy Collector earlier on 4/4/95 under Section 76A of the Act was without jurisdiction, hence it was rightly set aside by the Tribunal with consent of the parties and thereafter the appeal was preferred under Section 74 of the Act alongwith application for condonation of delay. Hence, the Deputy Collector had rightly condoned the delay and allowed the appeal. The Tribunal ought not to have set aside the order.

5.3. What the Deputy Collector had done was in accordance with Government Resolutions. Even if there may be any fault in the reasoning of the Deputy Collector, the Tribunal ought not to have disturbed the order of the Deputy Collector as the same was in consonance with law.

6. Mr.J.M. Patel learned counsel for Mr.S.G. Bharwad, (author of the order dated 25/10/2000), has submitted that the said Deputy collector had passed a quasi judicial order in exercise of his appellate powers and the Tribunal ought not to have made any observations or passed strictures against him without giving him an opportunity of being heard. Moreover, the Tribunal had acted in an arbitrary and discriminatory manner in making observations against Mr.S.G. Bharwad inasmuch as no such observations were made against Mr.J.C. Patel who had passed the previous order dated 4/4/95 and who had also passed similar orders in many other cases. On merits Mr.J.M. Patel has adopted the argument of Mr.A.J. Patel for the occupants.

7. Before dealing with the first contention on the ground of bias, it is necessary to discuss the other contentions on merits as they are interconnected and also because the allegation of bias can be better understood after appreciating the contentions on merits.

8. The statutory provisions relevant for the present controversy are as under :-

SECTION 43 :

(1) No land or any interest therein purchased by a tenant under Section 17B, 32, 32F, 32-I, 32-O 32U, 43-ID or 88E or sold to any person under Section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest, therein shall be partitioned without the previous sanction of the Collector.

(1A) The sanction under subsection (1)shall be given by the Collector in such circumstances and subject to such conditions, as may be prescribed by the State Government.]

(1AA) ..... (not relevant)

(1B) Nothing in sub-section (1) or (1AA) shall apply to land purchased under Section 32, 32F, 32-O or 64 by a permanent tenant thereof, if prior to the purchase, the permanent tenant, by usage, custom agreement, or decree or order of a Court, held a transferable right in the tenancy of the land.

(2) Any transfer or partition, or any agreement of transfer, or any land or any interest therein in contravention of subsection (1) shall be invalid.

SECTION 74 :-

Appeals :(1) An appeal against the order of the Mamlatdar and the Tribunal may be filed to the Collector in the following cases :-

(a) to (mm) .....

(ma) an order under subsection (1B) and (2) of Section 32,

(mb) a decision under section 31 or 32F, or an order under section 32G,

(n) an order under section 32K,32M or 32O,

(na) a decision under the proviso to subsection (4) of Section 32T or an order under Section 32U.

(o) to (r) .....

{rr} "an order made pursuant to a notification issued under subsection (3) of Section 43A.

{ra) an order under Section 43B,

(s) to (w) .....

Section 76A. Powers of Collector :

Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the State Government, at any time,-

(a) call for the record of any inquiry of the proceedings of any Mamlatdar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal, as the case may be, and

(b) pass such order thereon as he deems fit :

Provided that no such record shall be called for after the expiry of one year from the date of such order and and no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard.

Section 79:-

Every appeal or application for revision under this Act shall be filed within a period of sixty days from the date of the order of the Mamlatdar, Tribunal or Collector, as the case may be. The provisions of sections 4,5,12 and 14 of the Indian Limitation Act, 1908 shall apply to the filing of such appeal or application for

revision;

Provided that an appeal against a decision of the Mamlatdar under section 31 of 32F or an order passed by the Tribunal under section 32G before the date of the commencement of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960 may be filed within a period of six months from the date of such commencement.

9. In the first place, on merits it is submitted by both the learned counsel that the order of the Mamlatdar which was challenged before the Deputy Collector (Land Reforms) in revision application under Section 76-A of the Act was passed in the year 1960 but the revision application under Section 76-A was filed in the year 1995. Section 76-A specifically provides that the revisional powers cannot be exercised beyond one year from the date of the order. Deputy Collector Mr.J.C. Patel could not have called for the record of any inquiry or the proceedings of any Mamlatdar after the expiry of one year from the date of the order that is after 1961. Since the record was called by Mr.J.C. Patel after 34 years, the order dated 4/4/95 passed by him was a nullity and, therefore, it could not have been sustained in the revision before the Tribunal. Therefore, the occupants had rightly consented in the revision application of the State Government for setting aside the order dated 4/4/95 passed by Mr.J.C. Patel, Deputy Collector However the setting aside of the order dated 4/4/95 did not preclude the occupants from challenging the same order of the Mamlatdar dated Nil/1960 in appeal under Section 74 of the Act.

Section 74 of the Act providing for filing an appeal does not contain any such embargo and Section 79 which stipulates the period of 60 days from the date of the order of Mamlatdar as the period of limitation also provides that provisions of Section 5 of the Limitation Act are applicable to the filing of such appeal. Hence the occupants thought it fit to allow the order dated 4/4/95 being set aside by consent so that they can file an appeal under Section 74 of the Act alongwith an application for condonation of delay.

10. The Court cannot accept this contention. It is necessary to take note of the contents or the consent purshis (annexure-H) (which is reproduced in para 4.4. of this judgment). It did not make any reference to any appeal proposed to be filed by the occupants against the same order of the Mamlatdar. It merely expressed the

consent of the occupants to the order dated 4/4/95 of the Deputy Collector being set aside. It is also important to note that in his written representation dated 18/7/2001 to the Tribunal (Annexure-B), Mr.S.G. Bharwad, the author of the order dated 25/10/2000 stated interalia as under :-

"(12) The power of Attorney of the tenant was well aware in view of the Hon'ble Gujarat High Court's decision in Special Civil Application. No.366 of 1982 dated 12/3/1993 (G.L.R. Vl.XXXVI(I)) that the order of the Deputy Collector was without jurisdiction and it being nullity will not stand before this Hon'ble Tribunal if heard on merits.

(13) The P.O.A. of the tenant having realized that he had earlier approached a wrong forum having no jurisdiction to entertain revision u/s.76A after one year. He understood that order without jurisdiction being a nullity order it was to be ignored. But his difficulty was that if that order stood on record it would likely to come in his way in exercise of his right of appeal u/s. 74 which he had not exhausted earlier. It was hence felt necessary to get vacated that nullity order as it may not be an impediment to his appellate proceedings.

(14) The P.O.A. of the tenant therefore filed a consent purshis before this Hon'ble Tribunal with a request to quash the revisional order.

(15) The Division Bench of this Tribunal of Hon'ble President and Hon'ble member Shri B.K. Shah accepted the purshis and quashed and set aside the order of the Deputy Collector (L.R.) without going into merits of the case.

(16) The P.O.A. having got vacated a earlier nullity order there was no impediment to exercise his right of appeal which he had not exhausted earlier.

(17) The P.O.A. therefore filed an appeal No.126/2000 before me under Section 74 of

the Tenancy Act when I was holding the post of Deputy Collector (L.R. & Appeals) Ahmedabad."

It is difficult to appreciate as to how Mr.S.G. Bharwad, Deputy Collector (Land Reforms), who entertained the subsequent appeal under Section 74 of the Act, would know as to what was passing in the mind of the power of attorney for the occupants while giving consent purshis for setting aside the previous order dated 4/4/95. Apart from the question whether a quasi judicial officer can file such a representation for defending his order before the higher judicial forum, it is difficult to fathom as to why Mr.Bharwad was justifying the smart trick which had been played by the occupants to avoid any adverse order on merits in the State Government's revision application against order dated 4/4/95. In fact, the aforesaid contents of the representation of Mr.Bharwad justify the strictures passed by the Tribunal against him, which are referred to hereinafter.

11. As held by the Apex Court in Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat reported in A.I.R 1970 page 1, a revision or an appeal are part of the same appellate jurisdiction which the higher Court or forum exercises. The right of appeal is one of entering a superior Court and invoking its aid and interposition to redress the error of the Court below. Two things which are required to constitute appellate jurisdiction are the existence of the relation of superior and inferior Court and the power on the part of the former to review decisions of the latter. Revision is only one of the modes of exercising power conferred by the Statute; basically and fundamentally it is the appellate jurisdiction of the higher forum.

12. The above decision of the Apex Court was of course rendered in the context of the revisional power of the High Court under the Bombay Rent Act and under Section 115 of the Code of Civil Procedure on the one hand and the power of the High Court under Article 227 of the Constitution of India. But the principles laid down in the said decision are of universal application and would also govern not only the jurisdiction of the Gujarat Revenue Tribunal under Section 76 of the Tenancy Act, but they would also govern appellate and revisional jurisdiction of the Deputy Collector under Sections 74 and 76A (respectively) of the Tenancy Act, both of which are basically and fundamentally the appellate jurisdiction of the collector over the decision of the Mamlatdar and Agricultural Land Tribunal. The Gujarat

Revenue Tribunal was, therefore, right in coming to the conclusion that once the order dated 4/4/95 of the Deputy Collector in revision under Section 76A of the Act (modifying the Mamlatdar's order of 1960) was set aside by the Tribunal, (albeit by the consent of parties) on 28/2/2000, it was not open to the Collector or Deputy Collector Mr.S.G. Bharwad to entertain the appeal and exercise the powers of appeal under Section 74 of the Act against the same order of the Mamlatdar and A.L.T. passed in 1960.

13. Coming to the next contention urged by the learned counsel for the petitioners that what the Deputy Collector had done was in accordance with the Government Resolutions, it is required to be noted that what the occupants had challenged in the appeal was the same order dated 18/2/60 of the Mamlatdar in treating the land as a new tenure land and in not treating the tenant as a permanent tenant. The occupants had not gone with the case that in view of the Government Resolutions passed in 1996, or thereafter, without disturbing the order of the Mamlatdar and A.L.T. passed in 1960, the occupants were entitled to have the benefits under such Government Resolutions and, therefore, the restrictive conditions imposed on the tenant in respect of the land in question were required to be relaxed. What the Deputy Collector purported to do was to modify the Mamlatdar's order which was passed as far back in the year 1960, that is after 40 years though no justification was given by the occupants for the gross delay of 40 years in filing the appeal. Even if one were to calculate the period between 1960 and 1995 when the revision was filed, even then there was delay of 34 years. The Deputy Collector simply ignored such inordinate gross delay of 40 years observing that the conditions imposed by the Mamlatdar were a nullity and void ab-initio.

14. Even without going into the question whether conditions imposed by the Mamlatdar were in accordance with law or not, as per the settled legal position a so called void order does not cease to be a binding order. Such an order does not carry any label of voidness. Any party aggrieved by such an order has to approach the competent forum for challenging such order, and it is only when such competent forum sets aside the order that the order can be ignored otherwise it continues to be binding on all concerned, vide State of Kerala v. M.K.Kunhikannan Nambiar reported in 1996 (1) S.C.C. 435. The order of the Mamlatdar passed in 1960 having held the field for forty years could not have been set aside on merits (assuming that it was required to be set aside)

without condoning the gross delay of 40 years for which no explanation whatsoever was offered by the occupants.

In State of Rajasthan v. D.R. Laxmi and Ors. reported in 1996 (6) S.C.C. 445 and in State of Punjab v. Gurudev Singh A.I.R. 1992 S.C. 111 the Apex Court has again held that even if an order or action is ultra vires the power, and may be void, such an order or action need not necessarily be set at naught in all events. Even though the order may be void, if the party does not approach the Court within the period of limitation, where prescribed or if not prescribed within reasonable time (which is always a question of fact) and have the order invalidated, the Court can decline to grant the relief.
15. If at all the State Government had issued any Government Resolutions. like Government Resolutions dated 18/6/1996, 19/9/1997 and 9/11/2000 relied upon by the learned counsel for the petitioners at the hearing today and if such Government Resolutions give any locus-standi to the occupants in this case to move the competent authority for getting declaration as a permanent tenant or for modifying the conditions or modifying the restrictions imposed under the Act, it was for the occupants to move such application before the competent authority and it was not for the Deputy Collector to modify the conditions imposed as far back as in the year 1960 in purported exercise of his appellate power under Section 74 of the Act. Hence the second contention advanced on behalf of the learned counsel for the petitioners also deserves to be rejected.

The Court does not propose to go into this aspect regarding applicability or otherwise of the Government Resolutions on merits. In the memo of revision application filed in 1995, the occupants had referred to cultivation of land by their father Ambaram Bhuptaji from the year 1949-50 whereas in the appeal filed in 2000, they referred to even still prior cultivation by their forefathers. Whether any such alleged cultivation was actually done or not, whether the entries sought to be relied upon by the occupants in the proceedings can be relied upon or not, whether Government Resolutions issued in or after 1996 are applicable or not, all these questions cannot be examined in these proceedings which are essentially concerned with the maintainability of the challenge to the order passed by the Mamlatdar and A.L.T. way back in the year 1960. For this gross delay there was no explanation offered by the occupants and there could be none.

16. Now coming to the question of alleged bias of the

President of the Tribunal, it is necessary to set out the averments relied upon by the petitioners particularly the occupants who are the petitioners in Special Civil Application No.3340/2002. It is their case that after the State Government filed revision application against the order dated 25/10/2000 Mr.Vinay Sharma, President of the Tribunal sent a communication dated 8/1/2001, to the Principal Secretary to the Government of Gujarat in the revenue department expressing his opinion about the merits of the revision application and that the President of the Tribunal had, therefore, prejudged the issue even before the revision application of the State was heard in July, 2001.

Hence, it is necessary to make a reference to the said letter dated 8/1/2001 (annexure-N to the petition). It was a confidential urgent letter wherein it was pointed out to the Principal Secretary, State Government, Revenue Department, that the order dated 4/4/95 passed by the Deputy Collector, Mr.J.C. Patel under Section 76-A of the Act declaring the tenant as a permanent tenant and declaring the land as old land tenure was set aside by the Tribunal on 28/2/2000. Against the same order of the Mamlatdar, the tenant preferred appeal under Section 76 of the Act after a delay of 40 years. Mr.S.G. Bharwad Deputy Collector passed order dated 25/10/2000 allowing the appeal and modifying the order which was passed as far back as in the year 1960 with full knowledge of the previous litigation ending with the judgement of the Gujarat Revenue Tribunal and on the basis of the consent purshis by the parties, the Deputy Collector's order dated 4/4/1995 was set aside. The President of the Tribunal, therefore, requested the Principal Secretary to examine and decide whether it was a fit case for moving the High Court in contempt under the Contempt of Court Act, 1971. In view of the fact that when the matter pertaining to the tenancy and the nature of the tenure was finalised right upto the Gujarat Revenue Tribunal. whether reopening of the same matter by the Deputy Collector would amount to contempt of due process of law.

After the aforesaid letter was written, Mr.S.G. Bharwad came to be suspended by the State Government on 9/1/2001. As stated above, Special Civil Application No.274/2001 was filed by Mr.Bharwad challenging the order of suspension. We are, however, not concerned with that service dispute. We are concerned with the limited question whether the President of the Tribunal had any bias which disqualified him from hearing the revision application of the State Government.

17. In the judgment dated 7/8/2001 of the Tribunal giving rise to these two petitions, the Tribunal has highlighted certain recent trends in disposal of tenancy cases by the revenue authorities. The Tribunal noticed that certain Deputy Collectors suo moto exercised revisional powers after a lapse of 25-35 years without any legal justification and that the State Government was required to file revision applications against such orders in hundreds of cases. The Tribunal noticed that this was done to avoid payment of substantial premium on conversion of land from new tenure into old tenure and that this practice and modus operandi seemed to be gaining ground because apparently no serious consequences have followed the Deputy Collectors who have been passing such orders in such large numbers. The Tribunal further observed that in all these cases, the Tribunal has come to the conclusion that the action of the Deputy Collector in taking these cases suo moto after 25-35 years was based on consideration other than merits. The Tribunal thereafter referred to the fact that in the instant case even though revisional order dated 4/4/95 was set aside by the Tribunal on 28/2/2000 Mr.S.G. Bharwad exercised appellate powers under Section 74 of the Act though the Deputy Collector had full knowledge of the matter having been decided by the Tribunal. The Tribunal, therefore, forwarded a copy of this judgment to the Hon'ble High Court for suitable action that the Hon'ble High Court may deem fit with reference to the question of due process of law under the Contempt of Courts Act, 1971. The learned counsel for the petitioners state that the aforesaid contempt proceedings are pending before the Division Bench of this Court taking up contempt matters.

18. This Court is not concerned with the question of contempt of Court, but is concerned with the limited question whether the judgment dated 7/8/2001 of the Tribunal suffers from any bias. It is not the case of the petitioners that the President of the Tribunal or the member had any personal bias. All that is alleged is that the President had official bias as even before hearing of application finally in July he had addressed a communication in January, 2001 to the Principal Secretary of the State Government in Revenue department which was a party to the proceedings. The learned counsel have relied on the decision on this Court in A.S. Razvi v. Divisional Engineer, Telegraphs and on the decision of Apex Court in A.K. Karipak v. Union of India & Ors. reported in A.I.R. 1970 S.C. 150.

19. Having carefully considered the submissions made by the learned counsel for the petitioners and having

gone through the aforesaid authorities, this Court proposes to examine the question whether the judgment of the Tribunal was vitiated by any bias, on the touchstone of the test formulated by the Hon'ble Supreme Court in G.N. Nayak v. Goa University 2002 (2) S.C.C. 712 in the following terms :-

> "Bias may be generally defined as partiality or preference. It is true that any person or authority required to act in a judicial or quasi-judicial matter must act impartially.
>
> "If however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predipositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudices."
>
> (Per Frank,J, in Linahan, Re, (1943) 138 F 2d 650, 652)
>
> It is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred.
>
> As we have noted, every preference does not vitiate an action. If it is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision."

20. After Mr.Bharwad, Deputy Collector (Land Reforms)

passed the order in question, that order dated 25/10/2000 was communicated to the higher authorities and there was delay of a few days in filing Government's revision application before the Tribunal. At the stage of hearing the application for condonation of delay, the Tribunal noticed that a large number of such cases were being taken up in the districts and hundreds of orders were being issued, consequently revision applications of the State Government were coming up for before the Tribunal in large numbers. It was, therefore, obvious that the Tribunal was merely concerned with a large number of revision applications flooding the Tribunal and the Tribunal was keen to see that such situation does not keep recurring by the Deputy Collectors entertaining such revision applications after a gross delay of 30 to 40 years. The President of the Tribunal, therefore, brought this alarming situation to the notice of the Principal Secretary to the State Government in the Revenue Department who also has the administrative powers like transfer and/or suspension of officers like Deputy Collector. The final hearing of the particular revision application would have taken some time and, therefore, the Tribunal was keen to see that officers like Mr.Bharwad Deputy Collector do not go on exercising powers under the Act after gross delay of 30 to 40 years. This order spurred the State Government into some action.

It, therefore, cannot be said that the President of the Tribunal had any bias, even official bias, which would disqualify the President from hearing and deciding the revision application on merits. The revision application was decided by the Division Bench consisting of Mr.Vinay Sharma, President of the Tribunal and another member Mr.B.K.Shah (a judicial member who was one of the authors of the order dated 28/2/2000 by which the Tribunal had set aside the previous order dated 4/4/95 of the Deputy Collector with consent of the parties). In this set of glaring facts, it can not be said that the President of the Tribunal had any prejudice or preference which was not founded on reason or which was actuated by any self interest which disqualified him from hearing and deciding the revision application on merits.

21. As regards the decision of this Court in A.S. Razvi (Supra), that was a case where a clerk in the Post and Telegraph Department had made a representation against his transfer made by the Divisional Engineer. The representation was made to the Post Master General making certain serious personal allegations against the Divisional Engineer. The Post Master General sent the representation to the Divisional Engineer with

observation that the Divisional Engineer should consider advisability of taking disciplinary action after full enquiry against the petitioner. The Divisional Engineer initiated enquiry and at the stage of second show cause notice for dismissal of the petitioner, this Court held that since Razvi had made personal allegations against Divisional Engineer, the Divisional Engineer was so situated with reference to the departmental enquiry that he forfeited his qualifications to be an adjudicator thereon. There was a real likelihood of bias being exhibited by him and therefore, he was disqualified to hold the enquiry.

22. In A.K. Kraipak v. Union of India (Supra), one of the members of the Selection Committee for appointment to the post was himself a candidate, and, therefore, it was held that even if he did not sit as a member of the Selection Committee for considering his own case, his candidature was bound to bias his performance as a member of the Selection Committee while judging suitability of other candidates.

23. Both the above cases are easily distinguishable. In the instant case, no personal allegations are made by the petitioners against the President of the Tribunal. The President was handling a large number of cases where the Deputy Collectors were exercising their powers, revisional or appellate, under the Act after a lapse of 30 to 40 years and hundreds of revision applications of the State Government against such orders of the Deputy Collectors were flooding the Tribunal. The Tribunal also noticed that in the instant case, even when the order of the Deputy Collector dated 4/4/95 was set aside by the Tribunal with consent of the parties in the revision application of the State Government on 28/2/2000, again the same result was sought to be achieved by Mr.Bharwad, Deputy Collector by entertaining the appeal after a lapse of 40 years and passing the same order which was earlier set aside by the Tribunal with consent of the parties. This concern shown by the President of the Tribunal for the lack of probity in quasi judicial officers like Deputy Collectors did not at all reflect any prejudice or preference which was not founded on reason or which was actuated by any self interest, pecuniary or otherwise, whatsoever.

24. In view of the above discussion there is no merit in any of the contentions and accordingly Special Civil Application No.3340 of 2002 filed by the occupants deserves to be dismissed.

25. As regards the submissions of Mr.J.M. Patel for Mr.S.G. Bharwad in Special Civil Application No.3350 of 2002 it is required to be noted that this Court is not hearing Special Civil Application No.274/2001 in which Mr.Bharwad has challenged the order of suspension and also initiation of departmental enquiry. The petitioner was suspended and departmental enquiry was initiated against him even before the Tribunal rendered the impugned judgment dated 7/8/2001. Mr.Bharwad exercising powers under Section 74 of the Act was a quasi judicial authority who was supposed to speak through his order. When that order dated 25/10/2000 was challenged by the State Government before the Tribunal, there was no question of the author of the quasi judicial order being required to be given an opportunity of being heard or make representation before the higher judicial or quasi judicial forum.

26. If at all the occupants had any case for getting any relief under any recent Government Resolutions without disturbing the order passed by the Mamlatdar and A.L.T. in 1960, it was for the occupants to move appropriate competent authority and get their case examined by the competent authority. But Mr.S.G. Bharwad Deputy Collector exercising powers under Section 74 of the Act and hearing the appeal filed 40 years after the Mamlatdar passed the order in 1960, had no business to find fault with the order of 1960 on the basis of Government Resolutions passed in 1996 or thereafter. In the glaring facts and circumstances of the case already detailed in this judgement, this Court is not in a position to find any error with the findings given by the Tribunal or the observations made in the judgment dated 7/8/2001.

27. Both The petitions are accordingly dismissed.

It is clarified that the order passed by the Mamlatdar and A.L.T. in Tenancy case No,23/Makarba 1960 still holds the field and the Gujarat Revenue Tribunal's judgment and order dated 7/8/2001 (setting aside the Deputy Collector's order dated 25/10/2000) is legal and valid. If, without disturbing the order of the Mamlatdar & A.L.T. passed in 1960 and the judgment and order dated 7/8/2001 of the Gujarat Revenue Tribunal, the occupants have any right under any recent Government Resolutions regarding conversion of tenure of the land in question, the occupants may move the competent authority for appropriate reliefs under those Government Resolutions without challenging the original order passed by the Mamlatdar and A.L.T. in Tenancy case No.23/Makarba in

1960.

(M.S. Shah, J.)

/phalguni/